IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1)Shiv Shanker vs. State of Rajasthan & Ors.
(S.B.Civil Writ Petition No.474/07)

(2)Shiv Shanker vs. State of Rajasthan & Ors.
(S.B.Civil Writ Petition No.666/07)

Dated:- 03 .12.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Dron Kaushik, for the petitioners.
Mr. B.L.Tiwari, Dy.Government Advocate.

BY THE COURT:-

These writ petitions are directed against cancellation of auction of the dry trees of "Shisham" conducted by the respondent finalised in favour of the petitioners.

An auction notice dated 12.10.06 was issued by the Tehsildar(Revenue), Sri Ganganagar in pursuance of directions issued by the District Collector, Sri Ganganagar for auction of 48 dry trees of "Shisham" existing in premises of Government College and Government Hostel, Sri Ganganagar. The auction was held on 13.11.06. The petitioner deposited earnest money a sum of Rs.10,000/- in terms of the auction notice and participated in the auction proceedings. As per the auction notice, the dry trees were to be auctioned in 5 lots. Accordingly, the same were divided in five lots nos. 1 to 5 of 8, 9, 11, 9 and 11 trees respectively. The petitioner was highest bidder for lot no.1 and had given the bid for Rs.21,000/- . Being the highest

bidder, the auction was knocked down in his favour and he deposited 1/4th of the total bid amount for both the lots on the spot i.e. a sum of Rs.5,250/-. The bids of the petitioner were approved by the District Collector, Sri Gangangar vide letter dated 26.12.06. Thus after the confirmation of the bid as aforesaid , the petitioner was directed to deposit the remaining 3/4th amount, which was also deposited by the petitioner vide receipt dated 30.12.06 (Annex.4). The petitioner also deposited sales tax and mandi tax payable vide Annexures 5 and 6 placed on record. Despite deposit of the whole of the amount as per the terms and conditions of the auction, the dry trees were not handed over to the petitioner. In the meantime, the petitioner came to know that the said auction has been cancelled by the District Collector on an application being preferred by one Harpal Singh s/o Sharbat Singh expressing his desire to purchase the trees for a sum of Rs.2,84,00/-. It is relevant to mention here that Harpal Singh was not amongst the 11 persons who participated in the auction held on 13.11.06. However, the petitioner was not informed about the cancellation of auction in writing. At this stage, the petitioner preferred the writ petition no.474/07 (supra) seeking direction against the respondent to refrain from initiating the fresh auction proceedings. However, during the pendency of the said writ petition , a fresh auction notice dated 27.1.07 was issued by the respondent no.4 , whereby the fresh auction of the aforesaid dry trees was fixed to

be held on 29.1.07. The petitioner alongwith other auction bidders for different lots made a representation on 28.1.07 to the respondents . However, no heed was paid by the respondents to the same and they proceeded to conduct the auction as scheduled. At this stage,the petitioner preferred yet another writ petition inter-alia assailing the auction notice dated 27.1.07 and auction held in pursuance thereof.

A reply to the writ petition has been filed on behalf of the respondents wherein it is submitted that in pursuance of the auction notice the fresh auction was held on the scheduled date wherein 43 bidders participated and the highest bid given by M/s Deep Traders , Nai Dhan Mandi for Rs.6,06,000/- has been accepted. The entire amount has been deposited and the auctioned dry trees have also been removed by him from the site. In this view of the matter, no relief prayed for in the writ petition can be granted to the petitioner. It is stated by the learned Dy.Government Advocate that after cancellation of the petitioner's bid, the amount deposited by him was refunded to him vide cheque dated 12.2.07 but, he has refused to accept the same.

A perusal of the pleadings of the parties and the documents on record manifestly shows that the respondents have proceeded to cancel the auction knocked down in favour of the petitioner in perfunctory manner. After the acceptance of the bid of the petitioner and their depositing the whole of the

amount, the contract between the parties having been concluded, the same could not have been cancelled without there being any valid reason for the same. The cancellation of auction on higher amount being offered by a person who has not even participated in the auction proceedings as a bidder cannot be countenanced. Be that as it may, on the facts and in the circumstances of the case discussed above, the respondents cannot be directed to perform the contract inasmuch as the subject matter of the contract does not remain in existence. However, the respondents are under an obligation to refund the amount deposited by the petitioner forthwith. Since, the petitioner has been deprived of user of his money by the respondent wrongfully, therefore, the petitioner is entitled for the interest as well.

The learned counsel for the petitioner states that petitioner is entitled for the damages so also for refund of amount of sales tax and Mandi tax deposited by him. In my considered opinion, the question with regard to the entitlement of the petitioner for damages on account of the breach of contract cannot be gone into by this Court in exercise of the extra ordinary jurisdiction under Article 226 of the Constitution of India . For compensation on account of breach of contract, if any, the petitioner is at liberty to avail the remedy available to him under the general law.

Accordingly, the writ petitions are partly allowed. The

respondents are directed to refund the whole of the amount deposited by the petitioner alongwith interest @ 6% per annum from the date of deposit of the amount within a period of one month from the date of this order. For refund of amount of sales tax and Mandi tax deposited by the petitioner, he may prefer appropriate applications before the authorities concerned, who shall consider the same and pass appropriate order regarding refund in accordance with law. It is hereby clarified that the decision of the writ petition as aforesaid shall not preclude the petitioner from taking appropriate action in accordance with law for recovery of the damages for alleged breach of contract .No order as to costs.

(SANGEET LODHA),J.